

PERTINENT LEGAL REFERENCES  
and  
RECOMMENDED COURSE OF ACTION  
November 15, 1990

5-M Incorporated, Silver Reef Mine Site  
Washington County, Utah  
M/053/002

Section 40-8-8, (3), (a) of the Utah Mined Land Reclamation Act states "Whenever it appears that any person, owner, or operator is violating any provision of this chapter, or any rule or order made under the authority of this chapter, the Board shall file a notice of agency action, and shall hold an adjudicative proceeding."

The Division's 8/24/89 registered letter granted 5-M until 10/15/89 to resolve the Kerley bond issue and post the required surety. The letter stated that failure to meet this deadline would result in revocation of tentative approval and commencement of reclamation using the forfeited Kerley bond. As of this date, 5-M has failed to meet this deadline and thereby violated an order made under the authority of the Act. A registered letter stating that the notice of tentative approval is withdrawn was sent to the operator on 10/9/90.

Prior to an adjudicative hearing, the Board or Division must file a notice of agency action by notifying the individual(s) affected and by one publication in a daily newspaper of general circulation in Salt Lake City, Utah and in all newspapers of general circulation published in the county or counties in which the land affected is situated (Sec. 40-8-10).

Rule R613-005-104 (2.11) states that the Notice of Agency Action shall be in writing and shall be signed on behalf of the Board if proceedings are commenced by the Board, or by or on behalf of the Division Director, if the proceedings are commenced by the Division. The rule further defines what shall be included in the Notice.

It is recommended that the Division request the operator to immediately commence complete reclamation of the Silver Reef site. If the operator refuses, the Division should then file a notice of agency action with regard to the Division conducting reclamation of the site by utilizing the forfeited Kerley Bond. Since the estimated reclamation cost is substantially greater than the Kerley Bond the Division should take steps to collect the balance of reclamation expenses and associated legal fees by filing a civil action against the operator in the appropriate court.

3\*

\* contrast with language in 10-9-90 letter 4/13

jb  
MNM053002.2